

MEMORIAL

Anent Houstoun and Greenocks Submission to my Lord Whitelaw, and the Decreet Arbitral following thereupon.

THe Estate of *Newark* being more than exhausted by Debts, whereof fourtie thousand Merks was due to the Laird of *Houstoun* of lent Money, he in consideration that the Lands lay near his Lands of *Houstoun*, and that his Grand-mother was a Daughter of *Newark*, was perswaded by his Friends, and particularly by Sir *John Schaw* of *Greenock*, to endeavour the purchasing of the said Estate, in respect of it's convenient Situation. And in order thereto was advised by Sir *John* to dispoise his Lands of *Balglass* in *Stirling* Shire, (which had been in possession of his Family for four hundred years) to *Archibald Buntine* at sixteen years Purchase, that he might be the better provided with ready Money for acquiring of the Debts affecting the Estate of *Newark*, and accordingly did acquire in Debts, which with the Debts truly lent, did extend to *an hundred thousand pounds*, or thereby, and during the space of five or six years, that he was openly transacting with the Creditors of *Newark*, *Greenock* was not only his Adviser, but became Cautioner for him in some of the Debts transacted.

Houstoun, *Greenock*, Sir *Archibald Muir* and others, having taken a five years Tack of his Majesties Customs in anno 1691, the rest of the Tacksmen did send up *Houstoun* to Court in the year 1694, to negotiate a common Concern of theirs, *Greenock* taking advantage of his absence, did procure the Custom-Office which had always been kept at *Newark*, to be kept at *Greenock*, whereof the Merchants of *Glasgow* having complained to the Exchequer, the same was justly appointed to be kept at *Newark* as before, and *Houstoun* having concurred with the *Glasgow* Merchants to get this done, *Greenock* did highly resent his Carriage therein, as opposing the increase and growth of his Town of *Greenock*, tho thereby *Houstoun* only preserved that advantage to *Newark* according to possession, which *Greenock* had never pretended to before.

Sir *J. Shaw* intending to make *Newark* a Province to his Dominions of *Greenock*, design to buy the said Estate at a Rouse, and to give him a pretence thereto, he acquires a Debt from ane *Brown* of sixteen thousand Merks or thereby, and thereupon gives it out, that he would give much more for *Newark* than it was worth before *Houstoun* should have it at the Rouse, which occasioned such an open Breach betwixt *Houstoun* and him, as that not only they could not converse as friends of so near Relation should have done together, but even their Converse when they mett anent the Customs, which was their common interest, was very uneasy to the Co-partners.

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Tho' generally Friends to both were much troubled at this difference, and some of them did interpole to take away the same, considering that when one of them should happen to buy the Lands too dear at the Roup through the others Emulation in offering, it would be a perpetual discord betwixt the Families, yet neither Party could be perswaded to yeild to the other, *Houſtoun* pretending first the nearness of his Relation to the Familie, next the considerableness of the Debt due to himself which occasioned his first acquiring in of other Debts, then that he had done the same by *Greenock's* counsel, who advised him to sell *Balglas* the better to capacitate him to buy in the Debts of *Newark*; And *Greenock* on the other hand, alledging that his acquiring of *Newark* would prevent all subsequent Debates with *Houſtoun*, for it was impossible that he could have the Port of *Greenock* and *Houſtoun* the Port of *Newark* upon one Coast, but that there would be debates betwixt them, which truly is very probable if *Greenock* should treat him as he treats all the rest of his Neighbours, for *Greenock* will still think it a Diminution of his Glory, that any Laird but himself should have a Port upon that Coast.

In December 1696. *Houſtoun* and *Greenock* falling occasionally in Company with the Earle of *Lauderdale* and my Lord *Whitelaw*, Sir *Robert Dickson* and *Baillie Menzies*, they two falling on some hot Discourse about a Trifle with which the Company was not well pleased; *Greenock* said once and again to *Houſtoun* in a threatening manner, that if he would not forbear such a thing he would tell him a tale, and *Houſtoun* defying him once and again, and bidding him say what he durst, *Greenock* at length swear by GOD, if he insisted any further he would refer the buying of *Newark* and all other Debates betwixt them to my Lord *Whitelaw's* determination, and *Houſtoun* swearing again that he both durst and would refer als much to my Lord as *Greenock*. Thereupon the Earl of *Lauderdale* said that they were neither Gentlemen nor Christians if they went back of their word and Oath, and desired my Lord *Whitelaw* (who was a common Friend to them both, his Lady being Cousin German to both their Fathers) to accept the matter on him, and do that good Office to take away the Animosity betwixt so near Relations, which would be very acceptable to both their Friends. To which my Lord *Whitelaw* answered, that it was impossible for him to please them both, and he who should be hindered to buy *Newark* would certainly reclaim, they both swore the third time, that discern as he pleased, they should never reclaim.

Upon this the Earle of *Lauderdale* trysted them to dine at *Leith* the Morrow thereafter being Saturday, and his Lordship told them he should have a Submission ready to be subscribed by them, and accordingly his Lordship did produce the Submission drawn, which was subscribed by them before Dinner in presence of the Earl, and several of the Lords of Session, and other persons of Honour, in as solemn a manner as was fit to take away differences betwixt persons of their Quality and Temper.

After this by the space near by of an year, the Arbiter heard both Parties several times on their pretences, both face to face and aparte, and some times before Friends, who concerned themselves to have Differences taken away, and having got in *Houſtoun's* claim and *Greenock's* answers, with another Memorial from *Greenock*, he used his utmost endeavours to have settled their Differences with their own consent, but finding the buying of *Newark* which was the main Point controverted to be a Point indivisible, because neither of them would be content with a Parte thereof unless he got the whole, and remembering that he had ingadged to the Earl of *Lauderdale* to give his De-

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Decreet Arbitral therein, he did fully consider the whole matter, and did decern just a day within the year, before several honourable and famous Witnesses, whereby *Greenock* was assuaged from all the Points of *Houstouns* claim, except two, one whereof relating to *Greenocks* Intromissions with *Houstouns* part of the Customs, was past from by *Houstoun*, and the other anent the acquiring of the Estate of *Newark* was decerned against *Greenock* in the terms of the Decreet, which the Arbiter thought necessary to make that part of the Decreet effectual, suspecting so much of *Greenocks* temper, that notwithstanding the Ingagements he lay under, tho he would not reclaim, which the Arbiter could not imagine any Gentleman would do, yet that he would endeavour by all ways imaginable to do that by others, which he could not do directly by himself.

Tho' my Lord *Whitelaw* did timeously before expiring of year and day, write to *Greenock*, and intreat him to come in, yet *Greenock* did not come but wrote to my Lord a Letter, dated, 9. December 1697. wherein he sent inclosed the Claim, Answers and Memorial, and sayst that the allowing *Houstoun* to buy *Newark*, will occasion a lasting War betwixt their Families, and desires that if the Arbiter will decern for *Houstoun*, that the Claim, Answers and Memorial may be ingrossed in the Decreet, that his Inclinations to Peace may be known, and that he may be exonerated whatever might fall out afterwards. And which Papers my Lord *Whitelaw* did not ingross in the Decreet, both because it was not usual, and because it was not possible to contain three several Papers (ilk one whereof was longer than the Decreet) in the Blank on the back of the Submission.

Greenock did likewise by another Letter dated 22d. April 1697 directed to my Lord *Whitelaw*, write that the Submission made great noise in the West, that it was in my Lords power to ruine his Family, and that it was clattered he would do whatever *Houstoun* desired, and that he was called for putting it in my Lord *Whitelaws* power to ruine his Family, and that these Clatters did trouble his Lady who was sickly and indisposed, tho' he told her that there was no further hazard, but *Houstouns* getting of *Newark* intirelie, and that he was hopeful it should not be so either, but that if *Houstoun* got the Estate he would get his Money, and that his Lady answered what hindred him to get both *Sauchie* & *Greenock*, & therefore desired a Line from my Lord *Whitelaw*, bearing that if he would yeild to *Houstouns* getting of the Estate of *Newark*, my Lord would decern *Houstoun* to pay what was due upon it to *Greenock*, & Eases, and all the Estate of *Sauchie*. And accordingly my Lord wrote a return, which was to be shoven to *Greenocks* Lady (for preventing her Apprehension of such dangers,) bearing that the Estates of *Greenock* and *Sauchie* should not be given to *Houstoun*, because he had no shadow of interest therein, and if my Lord preferred *Houstoun* to the buying of *Newark*, *Houstoun* should be decerned to pay *Greenock* his Debt due thereon, without allowing *Houstoun* the benefite of the ease that *Greenock* had got, and which accordingly is decerned by the Decreet Arbitral.

Shortly after the Decreet Arbitral, *Greenock* came to Town, and when he was told of the Decreet, and got a Coppy thereof, he had not the confidence to reclaim, only he prest that he might not be forced to grant the Letter of Reversion mentioned in the Decreet making the Estate of *Newark* redeemable by *Houstoun* from him and his Heirs, for eighteen years purchase if he or they should happen to acquire the same, alledging that

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allegging that *Houftoun* might be secured without fuch a Servitude upon his Family (as he was pleased to term it) my Lord *Whitelaw* answered, that without that Reversion he might cause a person out-bid *Houftoun* at the Roup, and thereafter acquire the Estate of *Newark* from the Confident, and that a fiding Mare should be well girded; And fince (as he professed) he was willing not to compete with *Houftoun* anent the acquiring of *Newark*, he and his Heirs had no prejudice by granting the forefaid Reversion, and that tho he thought it a Diminution to his glory, yet a Reversion in obedience to a Decreet Arbitral, was no Servitude upon a person who had bound himself thereto, by submitting to what the Arbitrator should decern in relation to fuch an Affair.

Houftoun having waited at my Lord *Whitelaw's* desire the fpace of fix or feven Weeks for *Greenock's* obtempering the Decreet Arbitral, and finding him to shift, he raifed Letters of Horning thereupon, and caufes charge him therewith, which occasioned *Greenock* to apply again to my Lord *Whitelaw*, and represent, that Papers could not be drawn and conferted within the days of the Charge, and earnestly desired my Lord *Whitelaw* to procure a Sift from *Houftoun*, for fuch a competent time as his Lordship might fee all things ended betwixt them in the terms of the Decreet, and it can hardly be believed with what difficulty Obtestations of Friendship, and threatening to give up the same with *Houftoun* if he would not grant the Sift to the effect above-mentioned; *Houftoun* at length was forced either to caft out with my Lord *Whitelaw*, or grant *Greenock* a Sift till the 10th. of June, which Sift exprefly bears, that it was granted at my Lord *Whitelaw's* earnest desire, to the effect that all matters might be adjusted betwixt and that time, at my Lord *Whitelaw's* fight conform to the Decreet.

After procuring of this Sift, *Greenock* designing alwife to shift the Letter of Reversion, applys again to my Lord *Whitelaw*, and desires that prefently *Houftoun* might pay him his Money due upon the Estate of *Newark*, and that he was willing to assign the Debt and process of Sale, and urged that the granting of the Letter of Reversion might be delayed till the Roup were concluded, that in case *Houftoun* were preferred thereto, and that my Lord *Whitelaw* faw him fufficiently secured therein, and that *Greenock* had interposed no person to bid thereat, that should highten the Price upon *Houftoun* that then *Greenock* should be free of the Letter of Reversion (which he was pleased to call a Servitude) and that the Decreet Arbitral might be taken out of the Register, and in case my Lord *Whitelaw* should have any ground to fufpect that the Roup was not fsecure, upon pretence that all the Creditors were not called, or any other defect, or that he should have ground to believe that *Greenock* had hightned the Price by interposing an Offerer, that then the Decreet should be put in Execution againft *Greenock* as far as my Lord thought fit.

Thir Propofals were fo unlikely to be obtained from *Houftoun*, confidering the Terms that he and *Greenock* were in for the time, that my Lord *Whitelaw* at firft refufed to meddle therein, notwithstanding of the earneft indeavours of fome persons who have greateft influence on him, and at laft to free himfelf of the trouble of their Solistation, he makes the propofals to *Houftoun*, who at firft gave it a down-right Refufal, with as much Fervor and Heat as was confiftent with Difcretion, but after eight days Solistation by my Lord *Whitelaw*, *Houftoun* was prevailed with to yield thereto, with this only Argument

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ment, that as he valued my Lord *Whitelaw's* Friendship and Kindness, he would condescend to the saids Proposals.

Houstoun's Concession to this made my Lord *Whitelaw* at that time believe, that he had done a Business which all men called impracticable, to wit. The taking away the Animosities betwixt these two Lairds, but to his wonderful Surprisal, when the two met together with him, *Greenock* said he would do nothing till *June*; And my Lord *Whitelaw* pressing him for a Reason why he went back from his own proposals which had cost my Lord so much trouble to make *Houstoun* yield thereto, *Greenock* said he was afraid that his assigning the Debt would homologat the Decreet: My Lord answered, that the Decreet needed no Homologation, and that if it did need any, he had already homologat it by accepting of the Sift, bearing to be granted to the effect, that all things betwixt them might be ended at my Lord *Whitelaw's* sight, conform to the Decreet, *Greenock* warmly replied, that he would never obtemper the Decreet for no Consideration whatsoever; my Lord as warmly returned, that he would be at no more pains to settle them thereafter, and that though *Houstoun* would not maintain that Decreet Arbitral, he would maintain his Reputation in decerning it, let *Greenock* clamour never so much against it, whereupon they parted abruptly.

After this my Lord *Whitelaw* expected no more Applications from *Greenock*, in relation to that Business, but upon the very Morrow thereafter, *Greenock* took the confidence to send a person of great Quality and Worth to my Lord *Whitelaw*, to interpose with him to endeavour with *Houstoun* to allow him once again the Benefit of the foresaid Proposals, declaring that *Greenock* had acknowledged to him that he was sorry for his rashness in refusing the proposals the day before, and that both he and *Greenock* would take it as a singular favour, if my Lord *Whitelaw* would endeavour to influence *Houstoun* to accept once again of the Proposals formerly made, which my Lord *Whitelaw* absolutely declined, in respect *Greenock* had mal-treated him so often, and all alongst in that Affair.

The use *Greenock* made of the Sift was, to get time to his Lawyers to find out Reasons of Suspension, and then he takes the confidence upon the 9th. day of *June* instant, the very day before expyring of the Sift to offer a Bill of Suspension of the foresaid Decreet Arbitral, and that in defiance of his Engagements, and the late Regulations ratified in Parliament, upon the empty, false and far fetched, tho' long advised Pretences contained in the said Bill, which are fully answered in the Paper following.

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Follows the SUBMISSION,

AT *Leith* the 19 day of *December* 1696 years, the parties under-written, viz, Sir *John Houston* of that Ilk on the one part, and Sir *John Schaw* of *Greenock* on the other part, have submitted and referred, and hereby submits and refers themselves to the friendly Sentence and Decreet-Arbitral, to be given and pronounced by Sir *William Hamilton* of *Whitelaw*, one of the Senators of the Colledge of Justice, Judge Arbitrator, friendly and amicable Compositor, mutually elected, Nominat and Chosen of Consent of both Parties, anent all and sundry Claggs, Claims, Controversies and Debats of Law betwixt the saids Parties, any manner of way, and particularly but prejudice of the generality foresaid, anent their several pretences to the Estate of *Newark*, to be contained in the Claims and Answers to be given in by either Party to the said Judge-Arbitrator, with power to him to decide and determine in the saids matters debatable, and if he think fit to take the Oaths and Depositions of Parties and Witnesses, for the better clearing thereof, and whatever the said Judge Arbitrator shall give furth, Decern and Determine in the saids matters debateable betwixt the saids Parties & fill up in the Blank on the other side hereof subscribed by both the said Parties for that effect betwixt and the nineteenth day of *December* next to come; both the saids Parties binds & oblige them their Heirs Executors & Successors, to stand by & abide thereat, fulfil and underly the same to others, without any Appelation or again-calling whatsoever, under the Pain and Penalty of one thousand pounds Sterling Money, to be payed by the Party failer to the Party observer, or willing to observe this present Submission and Decreet Arbitral to follow hereupon, by and attour the fulfilling thereof; And for the more Security, both the saids Parties are content, and consent that this present Submission with the Decreet Arbitral, to be filled up in the Blank on the back hereof, be insert & registrat in the Books of Council and Session, that an Decreet of the Lords thereof be interponed thereto, and that Letters of Horning on ten days, & other Executorials in form as effairs may be direct hereupon, and thereto constituts Mr. *Thomas Veitch* and Mr. *Alexander Dunlop* Advocats their Procurators, &c. In witness (whereof written by *George Stirling* servitour to the said Sir *William Hamilton*) both the said Parties have subscribed their presents and Blank on the back hereof, and also the said Judge Arbitrator in token of his Acceptance, has subscribed thir presents, Day, Place, Moneth, and year of God abovewritten, before these Witnesses *John Earle* of *Lauderdale*, *John Lord Carmichael*, Sir *John Hamilton* of *Halraig*, Sir *David Home* of *Crosstie*, Sir *William Anstruther* of that Ilk, Sir *James Scougal* of *Whitehill*, four of the Senators of the Colledge of Justice, Sir *Archibald Murray* of *Blackbarony*, and Sir *Robert Dickson* of *Sornbeg*, and *William Menzies* Merchant late Bailie of *Edinburgh*, sic subscriptur *J. Houston*, *John Schaw*, *William Hamilton* accepts *Lauderdale* witnes, *Carmichael* witnes, *Jo. Hamilton* witnes, *David Home* witnes, *W. Anstruther* witnes. *Ja. Scougal* witnes, *Archibald Murray* witnes, *Rob. Dickson* witness, *William Menzies*. Follows the Decreet Arbitral written on the back of the foresaid Submission, I Sir *William Hamilton* within designed having considered and maturely advised the Claims, and

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and Answers given in to me as Arbitrator by the Parties within-mentioned, and having God and a good Conscience before me, do by this presents Decern and Determine in the saids Matters in manner after-mentioned. In the first place, I Decern and Ordain *Houstoun* to exoner and discharge *Greenock* of a Process depending at *Houstouns* instance against *Greenock*, for not taking the Oaths appointed by Law, as a Farmer of His Majesties Customs *debito tempore*, and of all that may follow upon the said Process, as also I Ordain *Houstoun* to discharge *Greenock* of all Dammage and Action for Damgages competent to him throw *Greenocks* taking *Houstouns* Place of Collector at *Newport-Glasgow*, And likewise I Ordain *Houstoun* to Discharge *Greenock* of any Damgages or Action competent therefore to *Houstoun* through *Greenock* his imploying of Friends, or augmenting the Sallaries of these Employed in Collecting, or otherwise managing of the Customs which are the first three Articles of *Houstouns* Claim, reserving the fourth Article and their mutual Compting to others anent the Customs. In respect *Greenock* alledges the same was not understood to be comprehended, under the within-written Submission, & that *Houstoun* past therefrae Likeas as to the fifth and last Article of *Houstouns* Claim; I ordain *Houstoun* to pay and satisfie *Greenock* without Deduction of the eases *Greenock* got all and haill the Principal Sums and Annualrents thereof (but not Penalties nor Expences) due by the Lairds of *Newark*, and acquired by *Greenock*, for which *Greenock* or his Authors has a real Right or diligence upon the Estate of *Newark*, Upon *Greenocks* Disposing to *Houstoun* the saids Rights and diligences, with warrandice from his proper Fact and Deed allenerly, likewise I decern and ordain *Greenock* upon *Houstoun* his Heirs or Successors there paying him as said is, to make over to *Houstoun* and his foresaids the saids Rights and diligences, with warrandice a foresaid, as also upon Payment as said is, to assigne *Houstoun* in, and to the action and process of Sale of the said Estate, depending at *Greenocks* instance with warrandice as said is. Item I Discharge and forbid *Greenock* by himself, or any Person interposed for him, to offer at the Roup of the said Estate of *Newark*, If *Houstoun* or any Person for him offer to purchase the said Estate at the said Roup, decerning and ordaining *Greenock* to pay, and refund to *Houstoun* (if *Houstoun* be the greatest offerer) whatever the price shall be hightned above the Lords price, by any offer to be made by *Greenock* or any other person interposed for him. Lastly I hereby decerne and declare, that if *Greenock* his Heirs or Successors, or any person for him, or them shall purchase or acquire the saids Lands and Estate of *Newark*, or any part thereof the samen shall be redeemable be *Houstoun* his Heirs and Successors, from *Greenock* his Heirs and Successors, or any person interposed for his or their behoove upon the payment of eighteen years Purchase, of such part of the said Estate, as holds of the King, and upon payment of seventeen years Purchase of such parts thereof, as holds of a subject (compting the Victual at an hundreth Pounds Scots the Chalder) any time before or within seven years after *Greenock* or his foresaids, are publickly Infest in the said Estate or any part thereof, and for that effect, I decern and ordain *Greenock* and his foresaids presently to Grant, Subscribe and deliver to *Houstoun* and his foresaids an oblidgment in the Terms abovespecified, declaring the Lands and Estate of *Newark* or any part or portion thereof, redeemable by *Houstoun* and his foresaids from *Greenock* and his foresaids at the price, and within the space abovementioned, in the case and event that *Greenock* or his foresaids or any person interposed for them, shall hereafter purchase or acquire the saids Lands and Estate, or any part or portion thereof, and oblidging him and them to Dispose, and denude themselves by publick Infestment of the saids Lands or any part or proportion thereof, that shall happen to be acquired by them, or any other person to be interposed for them, upon payment of the price above-specified, within the space abovementioned & which oblidgment is to contain a penalty of ten thousand Marks Money foresaid by and attour fulfilling thereof. In Witnels thereof, I have Sub-

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scribed this present Decreet, (written be *George Stirling* within designed) with my hand, at *Leith* the eighteenth day of *December* one thousand six hundred fourscore and seventeen years, before thir Witnesses *John* Earl of *Lauderdale*, Sir *John* Hamilton of *Halraig*, Sir *William* Anstruther of that Ilk, Sir *James* Scougal of *Whitehill*, four of the Senators of the Colledge of Justice, *James* Lundie of that Ilk, Mr. *William* Livingstoun Brother to the Viscount of *Kilsyth*, *Lodovick* Grant of that Ilk, *William* Hamilton of *Orbistoun*, Sir *John* Inglis of *Crawmond*, *Thomas* Drumond of *Riecartoun*, *Patrick* and Mr. *William* Houstouns Brethren to the said Sir *John* Houstoun of that Ilk. Sic Subscribitur *William* Hamilton, *J.* Houstoun, *John* Shaw, *Lawderdale*, *Anstruther* witness, *J.* Lundie witness, *W.* Livingstoun witness, *Lodovick* Grant witness *William* Hamilton witness, *John* Ingles witness, *William* Houstoun witness. *J.* Hamilton witness *Thomas* Drumand witness, *Ja.* Scougal witness, *P.* Houstoun witness. Extrastum per me Sic Subscribitur. *Ja* Justice. This Submission and Decreet arbitral is Registrat in the Books of Council and Session, upon the 20 day of *December* 1697.

Claim for Sir John Houstoun of that Ilk.

IN the first place, *Houstoun* claims the half of any benefite arising by *Greenocks* share in the Tack, in regard he did not qualifie himself within the time prescribed by Act of Parliament, so that according to Law and Justice, *Greenocks* share fell in equally to Sir *Archibald* Muir and *Houstoun*, who did qualifie themselves in due time.

2. *Houstoun* presumes he has Right to the half of the Sallary and Casualties, or other Emoluments arising to *Greenock*, as Collector in *Houstouns* place at *Port-Glasgow*; because by a Clause in the Principal Contract of Co-partnery, it is expressely provided, that nothing shall be done or concluded without the consent of two of the Principal Tacks-men, which was done of purpose and design that two of the Principal Tacks-men joyning together, might not inhanse to themselves places of profite, without consent of the third: So that *Greenock* cannot pretend to have the benefite and profits arising to him as Sole-Collector in *Houstouns* place, in regard his Commission is only Signed by Sir *Archibald* Muir, one of the Principal Tacks-men: Whereas by the Contract of Co-partnery, and Acts of the *Sederunt* Books, it ought to be Signed by two. Likeas it is very well known, that by the influence and picque of *Greenocks* humour amongst the rest of the Co-partners, *Houstoun* was laid aside.

3. At the time that *Houstoun* was laid aside, and *Greenock* put in his place, contrair to the expresse Clause in the Contract of Co-partnery, it is offered to be proven, that those who Banded with them in the doing of it, most of them were encouraged thereto from several views and expectations: One instance whereof is very clear, viz. The augmentations of their Sallaries, and the promotion of their Friends, carried on by that petulency and Faction that was then amongst them, as will more fully appear by the Extract of an Instrument taken against them.

4. It being the design of those concerned in the Tack, and exprest in the Contract of Co-partnery, that once a year their interest of profite or loss might be clearly stated and known, so that every mans proportion of advantage might be got out and improven by himself; Yet so far is this violat, that there hath never been any account of it, but the whole matter standing so

so far confused : And your Lordship is the rather put in mind of this by the great Sums of Money will be found to be in *Greenock's* hands, by the power and vertue of his last Collection.

5. My Father having been a considerable Creditor to the Laird of *Newmark*, to whom in respect of his Relation, he had found himself obliged to support his Credit, not only by lending Money *in specie*, but also by being become bound for his Debts ; and in the course of some years after, being obliged to transact the Sum owing to my Father upon a preferable Security, did amount to no less than 50000 Merks, the Affairs of the Family of *Newmark* growing still more and more in disorder, so that all his Creditors began to do real diligence against his Estate by Adjudication. I for the regard I had to my own security, was advised to transact most of them, so that I think all the Debts, except what *Greenock* has lately acquired, are now in my own person. But the Laird of *Greenock* having acquired some Debts as said is, thereupon raised a Summons of Sale, by a Roup, upon the Act of Parliament, wherein I and all concerned are convened. If *Greenock's* design in this Summons be by the Roup, to purchase this Estate, I must have liberty to represent to your Lordships, that it is an odd turn in one man, in one Affair first to advise me when those Affairs fell into disorder to purchase it ; and in order thereto to be Cautioner for me in most of the Transactions I made : A man in whose friendship and trust I had so much confidence, as it is very well known to your Lordship, and at whose instigation I sold a part of the old Estate of my Family at a low Rate to follow the said advice, if (as I have said) after all this *Greenock's* design in this Roup be to screw this Purchase from me, after so much pains and trouble, and after his own opinion and advice, I shall leave it to your Lordships consideration, being more for forms sake than any thing else, that this matter is named to your Lordship, who knows the whole matter of Fact, and all its concomitant circumstances ; so that what I demand in this particular is this, that your Lordship by your Decree Arbitral, would ordain *Greenock* to accept payment, in so far as he is Creditor, at the Rates and Eases wherewith he obtained the said Transactions, and that your Lordship would order this Affair so, that I may have no more trouble from *Greenock*, nor no other body for his behove about it ; for when your Lordship considers the whole matter from the Principles of Equity and Justice, I am very confident it will appear to your Lordships, that my Interest in this Purchase is from a much nearer degree of Relation, than *Greenock* can pretend to, being the Estate of a Family from whom I am descended ; and *Greenock* could no more complain of my endeavouring to disturb his Purchase of the Estate of *Saachie* upon his part, than I have reason to do, if he should do that of *Newmark* upon mine.

Answers for Sir John Shaw of Greenock, to the Claime given in against him, by Sir John Houston of that ilk, Thoug what Houston Claims in the 1, 2, 3 and 4 Articles does no wayes concern the present Submission, Yet to satisfie your Lordship, that Greenock is not so ill a Man, as he is represented by Houston's Claime, Greenock offers your Lordships these following Answers.

TO the first, anent the half of the Profit of *Greenock's* part of the Tack craved by *Houston*.

It is Answered, That *Houston* can have no shadow for pretending the same, because

because, if *Greenock* has been any wayes culpable in the matter alleadged, he is only Answerable by the Act of Parliament, to the Lords of Privy Council, and no wayes to *Houston*, or any others of his Co-partners.

To the 2^d. anent the benefit of the Collectors place at *New-port Glasgow*, from which *Houston* pretends he was illegally removed.

It is Answered, That albeit to the Contract of Co-partnery, where there is six Managers appointed, The 3. principal Tacksmen being three,, and any three of these six declared a *Quorum*, with the provision alwayes, that two of the three Principal Tacksmen be alwayes present: which Managers, or *Quorum* toresaid, are Impowred to Manage conform to the Rules laid down by the whole Co-partners, untill their next General Meeting which is declared to be the second Wednesday of *November*, 1692: Yet by the same Contract, it is expressly provided, That if any of the saids Co-partners shall be either necessarily, or willtully absent from the said Meetings, the same shall be no stop, nor hinderance to the saids Co-partners to go on, and proceed. sicklike, and also freely, as if the whole Co-partners did attend the Meeting.

And at the said General Meeting, in *November* 1691. They altered their former Mannagement, and appointed the Principal Tacksmen to Mannage for the ensuing year *per vices*, and each of them the time of their Mannagement are allowed, by the Sederunt Book, to in-put and out-put Servants at the several Ports, with content of One of the other Principal Tacksmen, Cath-keeper, or Overseer, by all which it is clear, beyond exception, that there was no Limitation upon the General Meeting, more than in any other Court or Society. And that they altered the way laid down for the Mannagement, the first year, which had the Restriction of two of the three principal Tacksmen being necessary to make a *Quorum*, for the Mannagement. So *Greenocks* Commission can be no ways quarrelled, though none of the principal Tacksmen had Subscribed it, the same being given at a General meeting: And it is signed by all the Co-partners, except *Houston*, and may be teen by the Sederunt Book, that *Houstons* Commission was declared Vacant by the same General Meeting, before *Greenock* got his, And *Greenock* declares, that neither he, nor any of the Co-partners, to his knowledge, had the least thought of *Houstons* loosing his Commission untill he, by the Grounds in the Sederunt Book, put the Society under an necessity to do the same, so cannot in reason be charged for it.

To the Third, being not only a Groundless Reflection upon *Greenock*, but also upon the whole Society, he makes no Answer to it, farther then is above.

To the fourth, anent the neglecting of the yearly Compts, *Greenock* remits himself to the Sederunt Book, and his Co-partners, whither *Houston*, or he be most chargeable for delaying, or refusing to clear Compts; However, to satisfie my Lord, *Greenock* is still willing, as he always was, to make Compt, Reckoning and Payment, of what shall be found due by him.

To the fifth, and last Article, anent the Estate of *Newark*, wherein *Houston* is pleased to shew the Grounds of his concern, *Greenock* does not think it proper for him to search into *Houstons* meddling, especially being considered an remote Relation to that Family, whereas, in the mean time, *Houston* is but an degree nearer: But as to the cause of *Greenocks* appearance in that affair, he has already represented the same to my Lord *Whitelaw*, at length, in the Memotiai given in by him, by which it is hoped, his Lordship will be satisfied, that it was never from design to interfere with *Houston*, or his Family, but on the contrair, to shun all occasions of Difference. But

(II)

But as to *Houstons* Demand, that *Greenock* should not only communicate to him the Eases of his Transaction of the Debts of *Newark*, but also desist to move any further in that matter, and from the principal of Justice, and *Houstons* nearer propinquity of Blood to the Family

It is Answered, That the Demand is very strange, if the Eases be not designed for the behoove of the Heir in which case *Greenock* is content, if *Houston* will communicate the benefit of his Transactions to the Heir of that Estate, *Greenock* will do the like, though he never made any ingadgement to the Heir, or his Friends. And albeit *Houston* has right to a great dale more, yet seeing *Greenock*, who is called a remote Relation, is willing to do so much, it cannot be thought, that *Houston*, who is so near, will decline it, especially considering, that he only transmits the Gift he had from Strangers, for the preservation of a Family, whereof he is so immediately descended.

But if the Laird of *Houston* shall not think fit to take the above method, then *Greenock* is hopeful, that my Lord *Whitelaw* will think it just, that such a proportion of the Estate may be allowed to *Greenock*, as corresponds to the Debts he has acquired, and also to his Relation to the Family: But that which *Greenock* does most of all value, is, that thereby no occasion may be hereafter, of his differing with *Houston*, for whom, and his Family, he hath so much regarde.

MEMORIAL for Sir John Schaw of *Greenock*, to my Lord *Whitelaw*.

Greenock having lived in that entire Freindship with Sir John *Houstoun* of that ilk for many years, suitable to them as Neighbours and persons of so near relation, and as their Predecessors had lived together formerly, that they were upon all occasions useful to others, and there was no divided Interest betwixt them, but some mistakes of late has unhappily fallen out, whereby the former correspondance and good understanding has been interrupted to the advantage of neither of them.

Greenock does acknowledge, that as he thought himself obliged in all cases to advance *Houstouns* interest, so as an instance thereof, he advised *Houstoun* to be concerned in the purchas of *Newark*, being an Estate contiguous to his own, and offered *Houstoun* all the concurrence he was capable of to make the designe effectual, not considering that thereby any breach could have arisen betwixt them or their Families:

Houstoun having proceeded to transact the Debts of *Newark*, and being lookt upon generally as the master of that Estate, *Greenock* did very quickly find for contrary effects to what he expected for, instead of having the assistance of *Houstoun* to support him against the insolencies of the Town of *Glasgow*, he did plainly see that they were fortified and animated by *Houstouns* accession to that Estate, and that more prejudicial actions were done to *Greenock* during that interval, than were at any time before, against him or his predecessors.

Whereupon *Greenock* much contrary to his inclination; But to the effect, he might evite the intalement of a Constant discord betwixt *Houstouns* Family and his, he did thereupon acquire some Rights upon *Newark*, and signified his inclinations to be concerned in the purchas upon the grounds foresaids, since which time mistakes has been so much intertained and fomented, which *Greenock* thinks unnecessary to mention, but wishes them to be removed,

All that *Greenock* will trouble my Lord with, is to represent that the only cause of his looking after any concern in *Newark*, is to prevent these animosities and breaches which must inevitably fall out betwixt *Houstouns* Family and *Greenocks*; In case *Houstoun* be the sole proprietor of that Estate, and *Greenock* expects that my Lord *Whitelaw* being a person to whom both partys, have the honour to have an equal relation, will be pleased by his Sentence to lay the foundation of a firm freindship, which his Lordship can well and easely do, so as neither party will have just reason to complain, and will certainly be the true interest of both.

Greenock has had such remarkable proofs of my Lord *Whitelaws* concerns in him, and the Family he now represents, particularly owns the first Possession of his Estate to my Lords influence, and he is confident his Lordship will prevent any thing that must of necessity make breaches betwixt his nearest Relations and their Families, and which will in process of time prejudice one of them, if not both.

ANSWERS

For *Houstoun*, to the Bill of Suspension given in by *Greenock* against him.

THE pretended Reasons in the Bill of Suspension, are 1. That the Decree is *ultra vires compromissi*; the Submission being only as to their pretences to the Estate of *Newark*, which can only be understood as to the Debts they had thereon as Creditors, which cannot be extended to either Parties pretence or design to purchase the said Estate; and tho the Charger gave it in in his Claim, and the Suspender thought fit to make Answer thereto, yet it neither was nor could be the Subject of a Submission. 2. *Esto* the pretence of purchasing at a Roup could have been the subject of a Submission, yet the excluding *Greenock* and his Heirs, and subjecting them to a perpetual Reversion in favours of *Houstoun*, in case they acquired the same, was an extraordinary thing, which is a sort of servitude and bondage upon the Family of *Greenock*. 3. The Decree is against the publick utilitie, to discharge *Greenock* to buy at a Roup, and is not only a hardship upon *Greenock*, but upon the Heir and Creditors of *Newark*, who may with, or without *Greenock*, complain thereof.

To which Reasons it is Answered, 1. To the first, that the Point submitted, was not which of the two Parties should bid at the Roup of *Newark*; There can be nothing more calumnious, for that was the great Subject of the Controversie betwixt them, as appears by the Claim, Answers, and Memorial, and by *Greenock's* Letters above-mentioned, directed to my Lord *White-law*. And that Question of *Houstoun* or *Greenock's* acquiring of their Debts on the Estate of *Newark* from others, was but a consequence of the former Question; and this is so notour to all the Countrey, and particularly to the Honourable Witnesses in the Submission, that it needs no further Answer, but that the Charger opposes the Submission, Claim, and Answers, Letters, and Memorial above-mentioned.

To the second, bearing, that tho the purchasing of *Newark* had been submitted, yet the perpetual Reversion was extraordinary, and was not submitted. It is Answered, That it being clear by the Papers above-mentioned, that the purchasing of the Lands of *Newark* at the Roup, was the main Controversie submitted, the Arbiter could not have preferred either Party to the buying at the Roup, unless he had discharged the other to bid at the Roup, which cannot be called a perpetual Interdict, neither could *Houstoun* be safe from some persons interposing for *Greenock's* behove, without the foresaid Letter of Reversion, which *Greenock* calls a bondage: For it is now evident that
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if the Arbiter had omitted that Clause of granting the Letter of Reversion, that *Greenock* would have taken some refined way of his own to frustrate *Houftoun* of the benefite of the Decreet Arbitral at the Roup, when he has the confidence to quarrel the Decreet Arbitral, upon the stretched pretences that it is an extraordinary Style, that it is a hardship and servitude upon his Family: Whereas no reason of iniquity by the standing Law, can take away a Decreet Arbitral; For suppose the Arbiter had decerned *Greenock* to have disposed the sixteen thousand Merks owing him upon the Estate of *Newark* gratis to *Houftoun*, *Greenock* could not have reduced the Decreet, far less can *Greenock* quarrel this Decreet, as extraordinary, since the point is extraordinary, and so required an extraordinary style in decerning thereof; nor can he quarrel the Decreet upon the account of Diminution of his Glory and Honour, in that the Decreet puts him and his Family under a perpetual Interdict and Servitude: For the greatest Kings think it not a Servitude to keep their Treaties; and if *Greenock* had granted the Reversion, he could not have reduced the same upon that ground that it was a Servitude upon his Family: And a Submission is of no less force than a Bond or Oblidgment, and therefore since the Arbiter behoved to prefer one of them to the buying, at the Roup, who might securely purchas the Lands, without being prejudged by the others Emulation in offering, his preferring *Houftoun* to bid at the Roup was most just, in respect of the Reasons contained in the Printed Memorial: But whether just or unjust, *Houftoun* is not obliged to debate, because it is a point submitted and determined by an Arbiter; yea *Greenock* himself by his Letters to the Arbiter, seems to acquiesce to *Houftouns* being preferred to the buying of *Newark*, providing he get his Debt due thereon, without giving *Houftoun* the benefite of the ease, wherein the Arbiter has decerned as *Greenock* desired. And as for the Letter of Reversion, which *Greenock* calls a Servitude, since it has a Contingencie, and Relation to *Houftons* security, in purchasing of the saids Lands at the Roup, and without which the Arbiter thought he could not hinder *Greenocks* indirect competing with *Houfton* at the Roup, by interposing a confidence. It is a groundless pretence to alleadge, that because the Letter of Reversion is not mentioned in the Submission, that therefore the Decreet Arbitral is *ultra vires compromissi*. The purchasing of *Newark* being clearly submitted, and the parties being bound in general, to fulfill whatever the Arbiter should discern and determine, in Relation thereto. And albeit men of greater knowledge than the Arbiter, might have found out a method for excluding *Greenock* from the purchas, also effectual, as the Letter of Reversion, and more agreeable to *Greenocks* dignitie, yet the Arbiters disrespect, in not taking a more honourable way with *Greenock*, can be no reason to reduce the Decreet Arbitral, otherways ill manners towards *Greenock* will be a stronger reason of Reduction, than injustice. But 2. If there be any further tye than Oaths, a Submission, and Decreet Arbitral, There is a further Obligation upon *Greenock*. viz, His frequent, and fervent solisting for, and accepting of the Sift from *Houfton*, in the terms abovementioned, and making use thereof, till the last day, which stopped Execution at *Houftons* instance for three Moneths, he having given in the Bill of Suspension upon the 9 of June, whereas the Sift expired the 10th. By which he has clearly Homologate the Decreet Arbitral, which Sift expressly bears, to have been granted at my Lord *Whitelaws* earnest desire, to the effect, his Lordship, in the mean time might see all matters ended betwixt them, conform to the Submission.

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To the thrid Reason, It is answered, 1^o That whatever be competent to the Heir of *Newark*, or Creditors thereof, it is not competent for *Greenock*, after he has submitted a Point, and the Point is determined, to alleadge, that the Point is not submittable upon a *justertij*. 2. To alleadge that the Point is not submittable, is so subtile a Point, that it is no shame for the Arbiter, that it was not obvious to him since, during the whole year of the submission, no Lawyer that ever heard thereof, did ever suggest any such thing, but *Houston* has an Act of Parliament, for supporting his Decreet Arbitral, which no reason of unjustice can take away, and yet a far fetched *utilitas publica* must do it, will any man of ingenuitie assert, that if *Greenock* had given a Bond, not to offer at the Roup, in the terms of the Decreet, that he could reduce that Bond granted by himself, upon the account that it prejudged publick Roups; For it cannot be controverted, but a party may submit any Right competent to himself, tho by consequence a thrid partie, be prejudged: Indeed, if the Law anent Roups had not only allowed and invited, but also commanded and ordained *Greenock* to bid at the Roup of *Newark*, then the Submission and Decreet Arbitral had been null but when parties submit what they should do, or not do, in Relation to such a thing, which is in their power to do, or not to do, a consequential Interest of a thrid Partie cannot hinder it, nor is there any thing more ordinary, than for persons who design to compete at Roups, to agree either before, or at the Roup, that the subject to be roup'd shall be divided, and one only shall bid, which was never questioned: And by the same argument of *Greenocks*, if a Merchant, who had brought home much Wine, or other Commoditie, should agree with another Merchant, to hinder him to Import a quantity of the same Goods, could that Transaction be quarrell'd upon this ground, that the more that were brought home, the Commodity would be the cheaper, whereby the consumers of the Commodity would have a prejudice, by paying dearer for it. But if *Greenock* had been preferred to the Purchas of *Newark*, by the Decreet Arbitral, this Topick would have been received with great Laughter by *Greenocks* Lawyers, when urged by *Houston* in a Reduction. 3. No party has a prejudice of any Legal Right competent to them, since the Lords will set a full price on the said Estate, as they think fit. And all the Leidges are free to offer at the Roup, except *Greenock* and his confidents, who resolved, and threatned to offer more than the true worth, in emulation of *Houston*, and if by the Decreet Arbitral, the Roup should be so stop't that none would offer the Lords price, the Creditors might have a better pretence to quarrel the Decreet, because it put them to the trouble of dividing the Land amongst them, but neither *Greenock*, nor the Creditors, have any fears, that the Roup will stop upon that account, neither are the Creditors here quarrelling the Decreet, nor can they quarrel the same, but by way of Reduction, since they are neither Parties submitters, nor Parties decerned by the Decreet. And if extrinsick prejudices were proper here to be considered, *Houston* would say, that if *Greenock* get *Newark*, he would ruine the Bay thereof, by bringing all the Trade to *Greenock*, which would be a great prejudice to the Merchants of *Glasgow*, whereas, when any other person buyes *Newark*, they are in no such hazard, The Decreet Arbitral having occasioned a great deal of joy in *Glasgow* they looking upon it as a great delivery from *Greenocks* near Neighbour-hood, which is not very desirable.

In respect of all which Greenocks Bill of Suspension ought to be refused.

